



**FEDERAL COMMUNICATIONS COMMISSION**  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, S.W., Suite 4-C330  
Washington, D.C. 20554

April 26, 2007

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

KGO Television, Inc.  
77 West 66<sup>th</sup> Street  
16<sup>th</sup> Floor  
New York, New York 10023-6201

Re: Station KGO-TV, San Francisco, California  
File No. EB-06-IH-3693

Dear Licensee:

The Enforcement Bureau is investigating whether KGO Television, Inc. (the "Licensee") may have violated Section 317 of the Communications Act of 1934, as amended, 47 U.S.C. § 317, and Section 73.1212 of the Commission's rules,<sup>1</sup> by airing certain video new releases ("VNRs") without proper sponsorship identification. According to a study by the Center for Media and Democracy ("CMD"), certain television broadcast stations, including Station KGO-TV, allegedly aired one or more of 33 VNRs without proper identification. The *Instructions* for responding to this letter and the *Definitions* for certain terms used in this letter are contained in the attachment, *infra*. We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,<sup>2</sup> to provide the information and Documents, as defined herein, within sixty (60) calendar days from the date of this letter.

Unless otherwise indicated, the period of time covered by these inquiries is July 1, 2005 to the present.

**Inquiries: Documents and Information to be Provided**

The CMD Study contains video recordings of allegedly original VNR programming material, as well as a video recording allegedly aired by the Licensee using the material concerning Allstate. The CMS Study does not include a video recording allegedly aired

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<sup>1</sup> See 47 C.F.R. § 73.1212 ("the sponsorship identification rule").

<sup>2</sup> See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

by the Licensee using the material concerning Barr Pharmaceuticals. Both sets of video recordings are available at <http://www.prwatch.org/fakenews2/findings/vnrs>. According to the CMD Study, the Licensee allegedly aired a VNR-based segment containing material on behalf of the following person:

- Allstate, on June 28, 2006.
- Barr Pharmaceuticals, on or about August 24, 2006.

1. For each VNR programming segment identified above, state whether the Licensee's station listed above aired the VNR program material as alleged in the CMD Study. If so, provide the following information:
  - a. the date(s) on which the Licensee received the VNR program material;
  - b. any materials the Licensee received that accompanied the VNR;
  - c. the person(s) from whom the Licensee received the VNR program material;
  - d. state whether the Licensee broadcast the VNR program material as received, without changes or editing.
    - i. If the response to 1(d) above is "no," describe specifically what content of the VNR program material was edited;
  - e. the date(s) and time(s) that the Licensee aired any portion of the VNR program material;
  - f. two recordings in VHS videotape format of the program(s) containing the VNR material clearly labeled with the file number referenced above, the station, and the VNR;
  - g. a written transcript of the segment(s) containing the VNR program material;
  - h. the steps, if any, the Licensee took to determine whether the VNR program material required sponsorship identification, and the information the Licensee learned through taking any such steps;
  - i. whether the Licensee was aware of or had reason to believe that any person involved in the production of the VNR segment paid or received consideration for the inclusion of material in the segment; and
  - j. whether the Licensee identified the VNR program material as sponsored, and if so, the manner in which that identification took place.
2. For each VNR programming segment identified above, state whether the Licensee, or any of its employees or representatives, received or were promised any consideration, from any source, in exchange for airing the VNR program material. If so, provide the following information:

- a. the person(s) from whom such consideration was received or was promised;
  - b. the consideration involved;
  - c. the dates on which the payment was promised and/or received;
  - d. the circumstances surrounding each such payment or promise to pay; and
  - e. any pertinent documents relating thereto.
3. State the policies and procedures of the Licensee relating to:
  - a. compliance with 47 U.S.C. § 317 of the Communications Act of 1934, as amended, and the Commission's sponsorship identification rules;
  - b. provide a copy of any written policies and procedures that the Licensee uses or used during the relevant period to train its employees or representatives about compliance with sponsorship identification laws; and
  - c. the handling and use of VNR program material.
4. To the extent not otherwise specifically requested, provide copies of all Documents that otherwise provide the basis for, support or otherwise relate to the responses to Inquiries 1 through 3 above.

### **Instructions for Filing Responses**

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's rules,<sup>3</sup> and be substantially in the form set forth therein.

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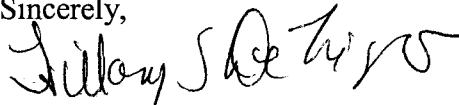
<sup>3</sup> See 47 C.F.R. § 1.16.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.<sup>4</sup> Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.<sup>5</sup>

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Melanie Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov) and [Ben.Bartolome@fcc.gov](mailto:Ben.Bartolome@fcc.gov).

The Licensee may direct any questions regarding this investigation to Melanie Godschall at (202) 418-7259.

Sincerely,



Hillary S. DeNigro  
Chief, Investigations and Hearings Division  
Enforcement Bureau

Attachment

cc: Susan L. Fox, Esquire  
Vice President, Government Relations  
The Walt Disney Company  
1150 17<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20036

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<sup>4</sup> See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

<sup>5</sup> See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

Attachment

**Instructions**

*Request for Confidential Treatment.* If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's rules.<sup>6</sup> Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

*Claims of Privilege.* If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

*Format of Response.* The Licensee's response must be consistent with the format of the questions asked.

*Method of Producing Documents.* Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

*Identification of Documents.* For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries. In addition, if the Document is a recording or transcript, it must be clearly labeled with the file number referenced above, the station, and the VNR.

*Documents No Longer Available.* If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to

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<sup>6</sup> See 47 C.F.R. § 0.459.

produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

*Retention of Original Documents.* With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

*Continuing Nature of Inquiries.* The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (1) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

### **Definitions**

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

“Broadcast,” when used as noun, shall mean audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

“Broadcast,” when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb “broadcast” may be used interchangeably with the verb “air.”

“CMD Study” shall mean Diane Farsetta and Daniel Price, *Still Not the News: Stations Overwhelmingly Fail to Disclose VNRs*, Center for Media and Democracy, at <http://www.prwatch.org/fakenews2/execsummary> (released by CMD on November 14, 2006).

“Consideration” shall mean money, services and/or any other thing of value.

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“Identify,” when used with reference to a person or persons, shall mean to state his/her full legal name, current business address, phone number, current organization and position therewith. “Identify,” when used with reference to a Document, shall mean to state the date, author, addressee, type of document (*e.g.*, the types of Document, as described above), a brief description of the subject matter, its present or last known location and its custodian. “Identify,” when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

“Licensee” shall mean the holder of a license or other authorization issued by the Federal Communications Commission for a broadcast television or radio station, and any predecessor-in-interest, affiliate, parent company, any wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

“Person” shall mean any individual or organization.